

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

CHRISTOPHER FAIN;
ZACHARY MARTELL; and
BRIAN MCNEMAR,
individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CIVIL ACTION NO. 3:20-0740

WILLIAM CROUCH, in his official capacity as
Cabinet Secretary of the West Virginia
Department of Health and Human Resources;
CYNTHIA BEANE, in her official capacity as
Commissioner for the West Virginia Bureau for
Medical Services;
WEST VIRGINIA DEPARTMENT OF HEALTH
AND HUMAN RESOURCES, BUREAU FOR
MEDICAL SERVICES;
TED CHEATHAM, in his official capacity as
Director of the West Virginia Public Employees
Insurance Agency; and
THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendants.

SCHEDULING ORDER

Pursuant to *Fed. R. Civ. P.* 16(b) and the *Local District Court Rules*, the Court **ORDERS**:

1. Joinder and Amendments: Motions to join other parties or to amend the pleadings shall be filed by **October 8, 2021**.

2. Discovery: The parties shall complete all discovery requests by **October 18, 2021**. Fact discovery shall be completed by **December 1, 2021**. The expert discovery deadline is **April 29, 2022**. The last date on which to take a discovery deposition is 45 days after the last date to

serve discovery requests. The last date to complete depositions shall be the “discovery completion date” by which all discovery, including disclosures required by *Fed. R. Civ. P.* 26(a)(1) and (2), but not disclosures required by *Fed. R. Civ. P.* 26(a)(3), should be completed. Pursuant to *L.R.* 26.1(c), the Court adopts and approves agreements of the parties with respect to limitations on discovery (numbers of interrogatories, requests for admissions, and depositions).

3. Expert Witnesses: The party bearing the burden of proof on an issue shall make the disclosures of information required by *Fed. R. Civ. P.* 26(a)(2)(A) and (B) for that issue to all other parties or their counsel no later than **January 14, 2022**. The party not bearing the burden of proof on an issue shall make the disclosures required by *Fed. R. Civ. P.* 26(a)(2)(A) and (B) for that issue to all other parties or their counsel no later than **February 15, 2022**. All parties shall provide the disclosures required by *Fed. R. Civ. P.* 26(a)(2)(A) and (B) if the evidence is intended solely to contradict or rebut evidence on the same issue identified by another party under *Fed. R. Civ. P.* 26(a)(2)(B), no later than **March 15, 2022**.

4. Settlement Meeting and *Fed. R. Civ. P.* 26(a)(3) Disclosures: No later than **December 15, 2021**, counsel and any unrepresented parties shall meet to conduct settlement negotiations. Lead trial counsel for the plaintiffs shall take the initiative in scheduling the meeting; all other counsel shall cooperate in the effort to achieve a successful negotiation and settlement. The parties must be prepared at a pretrial conference to certify that they tried to settle the case.

5. Failure to Appear or Negotiate: At least one attorney for each party and all unrepresented parties participating in any conference before trial shall have authority to make decisions as to settlement, stipulations, and admissions on all matters that participants reasonably anticipate may be discussed. Counsel and unrepresented parties are subject to sanctions for failures and lack of preparation.

The Court **SCHEDULES** a conference for **May 16, 2022**, at **11:00 a.m.** in Huntington to determine the need for *Fed. R. Civ. P.* 26(a)(3) disclosures and the balance of the schedule.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: August 6, 2021

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE